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IN THE SUPREME COURT OF THE UNITED STATES

No. 75-1177

IN THE MATTER OF THE ADOPTION OF NICOLE LEIGH HOFFMAN, a Minor Female Child

BERNARD ALLEN HOFFMAN, SUSAN ANN HOFFMAN, and NICOLE LEIGH HOFFMAN, Petitioners,

vs.

ROSE ALLEN HOFFMAN and ROBERT NICHOLAS HOFFMAN, Respondents.

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vs.

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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Stanley v. Illinois, 405 U.S. 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972).

Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158 (1932).

Ryan v. Foreman, 262 Ill. 175, 104 N.E. 189 (1914).

AUTHORITIES CITED

Ill. Rev. Stat., ch. 4, §. 9.1-8 (1973).

Ill. Rev. Stat., ch. 4, §. 9.1-11 (1973).

Ill. Rev. Stat., ch. 3, §. 131 (1975).

STATEMENT OF FACTS

Respondents feel that the following facts taken from the opinion of the Supreme Court of the State of Illinois are necessary for this Court to consider for an accurate view of the case.

Bernard Hoffman, the natural father, was unable to hold steady employment after returning home from the U.S. Navy in September of 1970. He often stayed out late with friends. His wife, Susan Hoffman, was also away during the day attending school and the minor child was left for a great deal of time with the grandparents, the respondents in this case, Rose and Robert Hoffman.

The natural parents of the child contemplated divorce after experiencing a great amount of marital discord. The adoption was discussed in the family on various occa-

sions, but the initiator of the discussions and the content of such discussions is in dispute. At the end of these discussions in June of 1971 there was a decision by both the natural parents and the grandparents to go forward with the adoption. On July 1, 1971, the natural parents proceeded to the attorney of the adoptive parents and were informed that an adoption would require them to give up all legal rights to the child. After a conference with that attorney, the parties proceeded to the chambers of Judge William C. Calvin who explained to them in detail the legal consequences of signing consent adoptions.

The natural parents admit that the judge told them irrespective of whatever arrangements they thought they had with Robert and Rose Hoffman concerning their future relationship with

the child, that any consent would be irrevocable and the consequence would be their absolute relinquishment of all parental rights to the child. The natural parents then signed the consent before Judge Calvin, who acknowledged it and indicated the consents were free and voluntary acts. The Judge further indicated that he had explained that by their signing of the consents they had irrevocably relinquished their parental rights to the child and that they had stated such was their intent and desire.

Approximately two years after the granting of the adoption, the natural parents filed a petition requesting that the decree be vacated, alleging that there had been false representation and further alleging that the consents were obtained without due process.

In a hearing on October 2, 1973, the trial

court ruled that the natural parents failed to meet their burden of proof to overturn their consent and vacate the adoption.

At the present time, the child is approximately five years old and has lived with the respondents her entire life.

ARGUMENT

A. ADOPTION IS A STATUTORILY STATE CREATED RIGHT PREVIOUSLY UNKNOWN IN COMMON LAW.

The adoption of a child by a person not its parent is a right that was previously unknown at common law. Ryan v. Foreman, 262 Ill. 175, 104 N.E. 189 (1914). The State of Illinois has created such a right by legislation. Ill. Rev. Stat. ch. 4, §. 1, et al. The respondents contend that the Illinois Adoption Statute contains sufficient safeguards to satisfy the Fourteenth Amendment and the Fifth Amendment to the Constitution of the United States.

Illinois provides for two methods of termination of parental rights: by a judicial finding of the unfitness of the natural parent, or by consent of the natural parent. Ill. Rev. Stat., ch. 4, §. 9.1-8.

The trial court found and the Illinois Supreme Court confirmed that the petitioners' consents were freely and voluntarily given, and that they were not induced by fraud or duress. The consent was given in a non-adversary circumstance, unlike the termination of parental rights by a finding of unfitness in a contested judicial proceeding.

If the petitioners freely and voluntarily entered into a consent for adoption, were in agreement with the termination of their rights as natural parents, and were aware of the finality and consequences of their actions, where can there by any violation of due process of law? It is important to note that due process of law is essential when a person is being deprived of his life, liberty or property. But in the signing of an adoption consent, when done freely and voluntarily, it cannot be said to deprive the parents of anything, they are the ones giving. Any right they lost was not through the force of law but through a voluntary and freely given consent on their part.

Petitioners contend that counsel appointed to represent their interest exclusively would have avoided this situation, but such a contention is pure speculation. The laws of Illinois provide remedies for natural parents who are fraudulently induced to sign a consent of adoption, or whose consent was induced by fraud or duress. Ill. Rev. Stat., ch. 4, §. 9.1-11. Thus, consents which appear on their face to be voluntarily and freely given but were induced by duress or fraud may be revoked.

Petitioners ask this Court to amend the Illinois statute to allow a revocation of the natural

parents consents for the new element of failing to formally appoint an attorney. This clearly would usurp the authority of the Illinois Legislature.

Illinois law has guarded the right of the natural parents in duress or fraud situations to withdraw their consent.

Illinois law has also jealously guarded the important public policy of granting finality to adoptions, and has refused to allow the mere change of mind on the part of the natural parents to void free and voluntary consents. Ill. Rev. Stat., ch. 4, §. 9.1-11.

Petitioners cite Stanley vs. Illinois, 405 U.S. 645, 31 L. Ed. 2d 551, 92 S.Ct. 1208 (1972) as this Court's recognition that equal protection must be granted to all members of the family unit to preserve it and the integrity of the right to

conceive and raise a family. The respondent has no argument with that right, and suggest that the Illinois Adoption Statute with its safeguards for the taking of consents does properly protect the right to conceive a family and the integrity of that unity. This Court noted in Stanley:

> In considering this procedure under the due process clause, we recognize, as we have in other cases, that the due process of law does not require a hearing "in every conceivable case of government impairment of private interest".

504 U.S. 649, 650. The respondents respectfully suggest to this Court that this is such a case, and that the due process clause of the United States Constitution does not require an appointment of counsel for natural parents to voluntarily sign a consent for adoption of their child. To do so would turn a consentual proceeding into that of an adversary situation. Ample opportunity

existed for the petitioners to obtain competent legal advice.

B. APPOINTMENT OF COUNSEL IS NOT CONSTITUTIONALLY MANDATED IN CIVIL CASES.

Petitioners admit that Powell v. Alabama, 278 U.S. 45, 53 S.Ct. 55, 77 L. Ed. 158 (1932), and Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972) are not direct authority for the proposition that counsel must be appointed in all civil cases. No such case exists. They argue by analogy that those cases justify such a result. We recognize that the Due Process Clause does not differentiate between deprivation of life, liberty or property. But to hold that from such a clause there evolves a mandatory appointment of counsel in every civil proceeding ignores the distinctions that exist be-

tween a consentual adoption and a criminal trial.

A criminal charge by definition is an adversary proceeding. Quite to the contrary, the consent in an adoption is a voluntary act that initiates a proceeding and is not a response to charges that have been brought against the natural parents. An adoption occurring by consent is in fact an action between two private parties requesting the State to give the effect of law to their private decisions.

C. WHETHER MINOR NATURAL PARENTS REQUIRED APPOINTMENT OF ATTORNEY OR GUARDIAN AD LITEM IS A MATTER OF STATE INTEREST.

Respondent recognizes that in various elements of contract law, privileges are granted to minors to void contracts. But we deny that such a right results from the Due Process Clause of the

United States Constitution but rather it existed in common law and is a subject of exclusive state control. States have reserved the authority to determine when minority gives way to majority and the State of Illinois has exercised that power. By statute, all persons below 18 years of age are considered to be minors for certain provisions of contract law. Ill. Rev. Stat., ch. 3, §. 131. The Illinois legislature has recognized that a minor parent is emancipated. The consent of a parent who is a minor is not voidable because of such minority. Ill. Rev. Stat. ch. 4, §. 9.1-11 (1971). The petitioners recognize the validity of this statue. They realize that there is authority for the State of Illinois to determine that siring or bearing of a child emancipates the minor parent and allows them to decide upon rearing the child or adopting it. If the court can allow a

16 year old minor to marry, it can also allow a minor parent to consent to an adoption without the appointment of a guardian ad litem. In so recognizing this point, the counsel for the petitioners surely must waive any argument that a guardian ad litem is necessary for a minor parent to sign a consent for an adoption.

D. THE FACTS OF THE INSTANT CASE SHOW THAT DUE PROCESS WAS NOT VIOLATED.

The facts of this case show that adequate legal advice was provided. If counsel for petitioner desires their theory to become the rule of law for this nation, they have chosen a poor vehicle to request this Court to make such a pronouncement. Petitioners admit the attorney of the adopting parents advised them of the finality of an adoption and that it must be a voluntary act

on their part.

After the conversation with that attorney, the natural parents, the adoptive parents and the attorney himself proceeded to the chambers of the Circuit Judge in DeWitt County where it is again unanimously admitted that the Circuit Judge described the effect of signing the consent in detail to the natural parents. The judge, after determining for his own satisfaction that the natural parents were fully advised as to the consequences and finality of their action, then allowed them to execute the consent in front of him. This was done in a hearing separate and apart from the adoptive proceeding. The respondent contends that the natural parents were under illusion that this was the proper manner of estate planning. The trial court concluded this was a sham and was made up to keep the natural parents

from the embarassing questions surrounding their consent to the adoption of their child.

The trial court concluded that there was no duress upon the natural parents and they had not been fraudulently led to believe that an adoption consent was the only method of estate planning to care for their child in the event of a mutual accident. The lower court determined that the natural parents freely and voluntarily gave their consent. Surely it cannot be contended that due process was violated as the legal consequences of the action of the natural parents was fully explained to them by an attorney and a judge.

CONCLUSION

The respondents respectfully suggest to this Court that adoption is a creation of state statute that was previously unknown at common law and exists in Illinois solely by virtue of the statute creating such a right. In this instance permission for the adoption was granted by the natural parents to which the sanction of state law was applied by a judicial proceeding. The respondent further suggests that it is a matter of state decision as to when attorneys are required for the representation of minors and that due process was granted to the natural parents in this circumstance by the advice of the attorney and circuit judge. What could a guardian ad litem provide in addition

to what is present in this case?

Respectfully submitted,

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APPENDIX

Ill. Rev. Stat., ch. 4, §. 9.1-8 (1973)

Consents to Adoption . Except as hereinafter provided in this Section, consents shall be required in all cases, unless the person whose consent would otherwise be required shall be found by the court to be an unfit person as defined in Section 1 of this Act, or the parent of an adult sought to be adopted.

Ill. Rev. Stat., ch. 4, §. 9.1-11 (1973)

Consents, irrevocability. A consent to an adoption by a parent, including a minor, executed and acknowledged in accordance with the provisions of Section 8 of this Act, or a surrender of a child by a parent, including a minor, to an agency for the purpose of adoption shall be irrevocable unless it shall have been obtained by fraud or duress on the part of the person before whom such consent, surrender, or other document equivalent to a surrender is acknowledged pursuant to the provisions of Section 10 of this Act or on the part of the adopting parents or their agents and a court of competent jurisdiction shall so find. The consent or surrender of a parent who is a minor shall not be voidable because of such minority.

Ill. Rev. Stat., ch 3, §. 131 (1975)

Minors, Who are. persons of the age of

18 shall be considered of legal age for all purposes, except that of the Illinois Uniform Gifts to Minors Act, and until this age is attained, they shall be considered minors.